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No. 97-2031

In The

Supreme Court of the United States

October Term, 1997

TDK CORPORATION,

Petitioner,

v.

WARREN/SHERER REFRIGERATION COMPANY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The First Circuit Court Of Appeal For The State Of Louisiana

OPPOSITION MEMORANDUM OF RESPONDENT WARREN/SHERER, A DIVISION OF KYSOR INDUSTRIAL CORPORATION, TO THE APPLICATION FOR WRIT OF CERTIORARI BY TDK CORPORATION

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QUESTION PRESENTED

Whether the foreign manufacturer of an allegedly defective product which has caused severe personal injuries in the forum state, should be allowed to use due process as a shield to protect itself from potential liability, when the product in question was being used in a manner intended by the manufacturer and the product arrived in the forum state through a normal process of distribution from which the manufacturer's commercial enterprise profited?

LIST OF PARTIES

All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

TDK Corporation, Petitioner

RULE 29.6 STATEMENT:

All of TDK Corporation's subsidiaries in the United States are wholly-owned, and there is no other parent corporation.

Warren/Sherer Refrigeration Company, a Division of Kysor Industrial Corporation, Respondent

Sanyo Electric Company, Ltd., Respondent

Ms. Barbara Vince, Respondent
Mr. Donald Harris, Respondent
Ms. Sandra Creel Eisler, Respondent
Mrs. Camille McNeese, Respondent
Mr. Alfred Lambert, Respondent
Ms. Myrtis Statham, Respondent
Ms. Donna Warner, Respondent
Mrs. Luther Martin, Respondent
Ms. Barbara May, Respondent
Ms. Carolyn Magee, Respondent
Ms. Alene Smith, Respondent
Ms. Nora Byrd, Respondent
Mr. Charles Ray Weary, Respondent
Ms. Irene Carroll, Respondent

LIST OF PARTIES – Continued

Mr. M. J. Weary, Respondent
Mr. Michael Talmadge Walker, Respondent
Ms. Julia McGowan, Respondent
Ms. Evelyn Higgins, Respondent
Ms. Rebecca Phillips, Respondent
Mr. Herbert Toney, Respondent
Ms. Julie Richardson, Respondent
Ms. June Gatlin, Respondent
Mr. Robert Ladner, Respondent
Ms. Melissa Seal, Respondent
Mrs. Waver James, Respondent
Mrs. Mary Jenkins, Respondent
Mr. Robert Jenkins, Respondent
Mr. Sidney Gayle Bickham, Respondent
Ms. Gladys Neil Fields, Respondent

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "[n]o State shall . . . deprive any person of life, liberty or property, without due process of law. . . . "

II. Louisiana Revised Statute Annotated Section 9:2800.51 *et seq.* (also known as the Louisiana Products Liability Act) states, in pertinent part:

9:2800.53

The following terms have the following meanings for the purpose of this Chapter:

(1) "Manufacturer" means a person or entity who is in the business of manufacturing a product for placement into trade or commerce. "Manufacturing a product" means producing, making, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing a product. "Manufacturer" also means:

* * *

(b) A seller of a product who exercises control over or influences a characteristic of the design, construction, or quality of the product that causes damage.

* * *

(3) "Product" means a corporeal movable that is manufactured for placement into trade or commerce, including a product that forms a component part of or that is subsequently

incorporated into another product or an immovable . . .

9:2800.54

A. The manufacturer of a product shall be liable to a claimant for damage proximately caused by a characteristic of the product that renders the product unreasonably dangerous when such damage arose from a reasonably anticipated use of the product by the claimant or another person or entity.

B. A product is unreasonably dangerous if and only if:

(1) The product is unreasonably dangerous in construction or composition as provided in R.S. 9:2800.55;

(2) The product is unreasonably dangerous in design as provided in R.S. 9:2800.56;

(3) The product is unreasonably dangerous because an adequate warning about the product has not been provided as provided in R.S. 9:2800.57; or

(4) The product is unreasonably dangerous because it does not conform to an express warranty of the manufacturer about the product as provided in R.S. 9:2800.58 . . .

III. Additionally, Louisiana Revised Statute Annotated Section 13:3201 provides, in pertinent part:

A. A court may exercise personal jurisdiction over a nonresident, who acts directly or by an agent, as to a cause of action arising from any one of the following activities performed by the nonresident:

* * *

(8) Manufacturing of a product or component thereof which caused damage or injury in this state, if at the time of placing the product into the stream of commerce, the manufacturer could have foreseen, realized, expected, or anticipated that the product may eventually be found in this state by reason of its nature and the manufacturer's marketing practices.

B. In addition to the provisions of Subsection A, a court of this state may exercise personal jurisdiction over a nonresident on any basis consistent with the constitution of this state and of the Constitution of the United States.

STATEMENT OF THE CASE

This lengthy and complex litigation began with an outbreak of Legionnaires Disease in Bogalusa, Louisiana during October and November 1989. The disease, which results from exposure to *legionella pneumophilia* bacteria, caused illnesses in more than three dozen people and led to the death of several victims. The State of Louisiana Office of Public Health and the National Center for Disease Control investigated and traced the bacteria to a Bogalusa, Louisiana Winn-Dixie produce display case, which used a water-misting machine. The water-misting machine, more correctly identified as an ultrasonic humidifier, converted stored water into a fine mist, which was then sprayed into the air over the fruit and vegetables in the display case. Apparently, the *legionella* bacteria

infected the stored water and when the water was converted into a mist, the bacteria was inhaled, along with the water mist, by Winn-Dixie customers.

Several separate lawsuits were filed and most of these suits were eventually consolidated against the following defendants: Winn-Dixie; Yukyan Kabushiki Kaisha Co., Ltd. (hereinafter "Ucan"), a Japanese corporation who purchased a drive circuit for incorporation into its humidifier from another Japanese Corporation, TDK, the applicant herein; L. W. Beal, Inc. (hereinafter "Beal"), an American company that bought Ucan's humidifier; and Warren/Sherer Refrigeration Company, a division of Kysor Industrial Corporation (hereinafter "Warren/Sherer"), who purchased the humidifier from Beal for installation in its produce display case.

Winn-Dixie settled with plaintiffs before trial and was dismissed from the case. After trial began, but before a verdict was rendered, plaintiffs settled with Warren/Sherer, its insurer Wausau Insurance Company, and Commercial Union Insurance Company on behalf of L. W. Beal, who were the only viable defendants remaining in the case at that time.

The case was left open, however, and shortly thereafter, Warren/Sherer and Wausau filed third-party demands against TDK, the instant applicant, and Sanyo Electric Company, Ltd., another Japanese company (hereinafter "Sanyo"). The third-party demands included product liability claims and later, negligence claims against both third-party defendants. Subsequently, the original plaintiffs also filed a supplemental and amending petition alleging claims against TDK and Sanyo identical to those asserted by Warren/Sherer.

Warren/Sherer and plaintiffs allege TDK manufactured and sold the drive circuit that was incorporated in the ultrasonic humidifier, and that it was a defect in TDK's drive circuit that resulted in the infectious outbreak and plaintiffs' injuries. Thus, Warren/Sherer and plaintiffs allege that under the Louisiana Products Liability Act (La. Rev. Stat. Ann. 9:2800.51 *et seq.*) TDK is the "manufacturer" of the drive circuit as well as the humidifier, and is liable for all or part of the damages sustained by the original plaintiffs. Jointly and/or in the alternative to the products liability theory, Warren/Sherer and plaintiffs also allege TDK was negligent in its design and manufacture of the drive circuit.

EARLIER PROCEEDINGS

In response to Warren/Sherer's and plaintiffs' allegations, TDK filed declinatory exceptions of lack of personal jurisdiction. Trial Court Judge Hedges heard argument on May 2, 1997 and took the matter under advisement. On May 14, 1997, Judge Hedges overruled and dismissed TDK's exceptions. (TDK's App., 6a-7a). In her Reasons for Judgment, she found "Warren/Sherer carried its burden of proof with regard to TDK's minimum contacts with the forum state" and that TDK failed to show "it would be unduly burdensome to litigate in Louisiana in a suit brought by Louisiana plaintiffs regarding an incident which occurred in Louisiana." (TDK's App., 13a).

Seeking reversal, TDK applied for supervisory writ to the Louisiana First Circuit Court of Appeal. On December 29, 1997, a panel of the First Circuit composed of Judges Foil, Whipple and Kuhn denied the application in a *per curiam* written opinion (TDK's App, 1a-4a). The First Circuit also found Warren/Sherer had met its burden of proving TDK had minimum contacts in Louisiana. It also concluded that the trial court's assertion of jurisdiction satisfied "traditional notions of fair play and substantial justice." (TDK's App., 3a-4a).

In January 1998, TDK applied to the Louisiana Supreme Court for a writ of certiorari to review the First Circuit's decision. The Louisiana Supreme Court denied the writ, and the instant Petition for Writ of Certiorari to this Honorable Court was filed within 90 days of the state court writ denial. (TDK's App., 5a).

ARGUMENT – REASONS FOR DENYING TDK'S WRIT APPLICATION

THE CIRCUMSTANCES HEREIN DO NOT PRESENT A CASE OF FIRST IMPRESSION, NOR DO THE DECISIONS OF THE LOUISIANA COURTS CONFLICT WITH FEDERAL PRECEDENT OR TDK'S CONSTITUTIONAL RIGHTS.

The Louisiana Courts below correctly applied the settled and well-resolved legal precedent concerning the limits of due process and *in personam* jurisdiction. The issues involved in Louisiana's exercise of jurisdiction over TDK are not novel and upon the facts given, do not identify an unresolved aspect of *in personam* jurisdiction requiring this Court's attention. *See*, U.S. Sup. Ct. Rule 10,

28 U.S.C.A. West Supp. 1998. Each of TDK's alleged justifications for a writ of certiorari is based on nothing more than TDK's disagreement with the lower courts' view of the facts and application of the relevant case law to those facts. Although TDK cries foul at the idea of being held accountable in Louisiana, it fails to substantiate why due process is being violated in this case. Instead, the evidence shows TDK at the very least should have reasonably foreseen that a certain number of the drive circuits it manufactured and sold were entering foreign markets like Louisiana.

TDK'S ACTIONS MET THE "MINIMUM CONTACTS" TEST FOR JURISDICTION

In approaching the basic constitutional due process analysis necessary in all non-resident jurisdictional challenges, the Louisiana Supreme Court as well as the federal courts use the *International Shoe* two-step formula: (1) the non-resident must have certain minimum contacts with the forum state; and (2) the exercise of jurisdiction must not offend traditional notions of fair play and substantial justice. *International Shoe v. Washington*, 326 U.S. 310, 320, 66 S. Ct. 154, 160 (1945); *See also, deReyes v. Marine Management & Consulting*, 586 So.2d 103, 105 (La. 1991). In the context of products liability, this Court evaluated non-resident jurisdiction in the following terms:

> The forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the stream of commerce with the expectation that they will be purchased by consumers in the forum State.

World-Wide Volkswagen Corporation v. Woodson, 444 U.S. 286, 297-98, 100 S. Ct. 559, 567 (1980).

Louisiana exercises personal jurisdiction over a non-resident to the full extent consistent with the non-resident's Fourteenth Amendment rights under the United States Constitution. Thus, Louisiana's long-arm statute provides for jurisdiction over a non-resident component part manufacturer. Further, the Louisiana Supreme Court has discussed, in detail, specific jurisdiction over a non-resident and in accordance with this Court's discussions of the same issue, stated:

> [T]he requirement of meaningful contacts is satisfied if the defendant has purposefully directed his activities at residents in the forum, and the litigation results from alleged injuries that arise out of or relate to those activities. By requiring that a defendant must have purposefully availed himself of the privilege of conducting activities within the forum state, thus invoking the benefits and protections of its laws, the requirement ensures that he will not be haled into a jurisdiction solely as a result of a random, fortuitous or attenuated contact, or by the unilateral activity of another party or a third person.

deReyes, 586 So.2d at 106 (citations omitted). Based on the multitude of cases since *International Shoe* and *World-Wide Volkswagen*, clearly, the focus in the stream-of-commerce analysis is not the number of contacts, but the nature of those contacts. *Tichenor v. Roman Catholic Church of the Archdiocese of New Orleans*, 32 F.3d 953, 959 n. 15 (5th Cir. 1994).

The issue herein is whether it was reasonably foreseeable the TDK drive circuit would enter a forum such

as Louisiana at the time TDK manufactured and sold it into the stream-of-commerce in Japan. The answer to this question lies in the federal and state case law on non-resident jurisdiction which takes into consideration the economic realities of the modern world. "[T]he reasonable market participant in the modern commercial world has to expect to be haled into the courts of that state, however distant, to answer for any liability based at least in part on that exportation." *North American Philips v. American Vending Sales, Inc.*, 35 F.3d 1576, 1580 (Fed. Cir. 1994). In fact, according to *Petroleum Helicopters, Inc. v. Avco Corporation*, 804 F.2d 1367, 1370 (5th Cir. 1986), "[t]he stream-of-commerce principle is designed to encompass companies that purposefully serve markets broader than the states in which its initial or direct sales are made."

In *Barone v. Rich Brothers Interstate Display Fireworks*, 25 F.3d 610 (8th Cir. 1994), *cert. denied*, 513 U.S. 948, 115 S. Ct. 359 (1994), a products liability claim involving imported Japanese fireworks, the court stated:

> Although a generation has not quite passed since *World-Wide Volkswagen* was decided, the acceleration in the internationalization of commerce is apparent. In this age of NAFTA and GATT, one can expect further globalization of commerce, and it is only reasonable for companies that distribute allegedly defective products through regional distributors in this country to anticipate being haled into court by plaintiffs in their home states.

Id., at 615. As recognized recently by a Louisiana Court, "[T]he interpretation of the particular nature of activities deemed to fall within the parameters of 'purposeful

availment' has evolved to reflect the modernization of interstate electronic communication and transportation." *Hunter v. Meyers*, 96-1075, p. 6 (La.App. 1 Cir. 3/27/97), 691 So.2d 318, 322.

Thus, the heart of the issue at bar is not whether TDK was actually cognizant the particular component part at issue would be incorporated into a grocery store produce case in Bogalusa, Louisiana. Instead, the issue is whether TDK should have anticipated the drive circuits would be incorporated into humidifiers used in locals such as Louisiana based on TDK's intention for the product's use, TDK's sales and its knowledge of the market. The Court must account for the broader, market-related issues involving TDK and its sale of drive circuits in general. In addition, the jurisprudence is abundantly clear that the focus should not be on what TDK subjectively intended or what it "thought" would happen. The standard is an objective rather than a subjective one. It centers on the entire factual context of the case, the actions of the manufacturer, and the reasonable effect of those actions. Thus, the fundamental question is whether, in serving the particular market TDK was serving by producing the product in question, TDK could or should have reasonably expected its product to end up in some place like Louisiana.

In applying those very same criteria to the instant matter, it seems clear TDK was or reasonably should have been aware that a certain number of the drive circuits it sold every year were making their way to the United States. By TDK's own admission, the drive circuits at issue were "designed for a wide range of applications." Warren/Sherer is unaware of any self-imposed limits or

restrictions TDK placed on its distribution of drive circuits. To the contrary, TDK obviously attempted to market the circuits on as wide an international basis as possible. If the sale and use of the drive circuits were truly random, fortuitous, or attenuated, as TDK has formerly alleged, it is highly unlikely TDK would have even been engaged in the circuit's production in the first place, since TDK's only logical purpose for doing so was to create a consistent profit.

Additionally, it is clear from the discovery already produced in this matter that TDK is truly an international corporation, with a world-wide reach both in corporate affiliations and in sales. Between 1985 and 1995, the percentage of TDK's total net sales occurring outside of Japan ranged from a low of 43.4% in 1988 to a high of 56.8% in 1995, with anywhere between one-third to one-half of that sub-total coming from the Americas. TDK currently has at least ten wholly-owned subsidiary corporations existing in the United States, with a cumulative total of thousands of employees.

Sales figures provided by TDK in response to Warren/Sherer's discovery requests indicate that literally thousands of the basic type of drive circuit at issue in this case are sold by TDK every year. This volume of sales is confirmed by the affidavit testimony of Teruo Fukushima, the General Manager of TDK's Legal Affairs Department, that was offered by TDK in connection with the disputed exceptions of jurisdiction and included in the instant Writ Application as part of TDK's Appendix pages 17a-20a.

In paragraph 5 of that affidavit, Mr. Fukushima also states that the drive circuit at issue has "a broad variety

of applications and uses in connection with humidifiers and misting machines." This statement clearly evidences TDK's own awareness of the particularized and yet still extensive distribution opportunities available for the drive circuit. TDK was certainly well-cognizant in manufacturing the drive circuit in question that it was producing a sophisticated, highly-technical, and highly-specialized electronic component, and that the market for such a product was also sophisticated, highly-technical, and highly-specialized. It was also very aware that the only intended function of the circuit was to serve as a component part of a larger item, which might then in turn be incorporated into something else.

TDK should not be permitted to avoid responsibility for the very serious physical and emotional harm done by an alleged defective product it made and sold (and derived revenue from) simply because a diffuse distribution system created several steps between the product's manufacture and its ultimate use. Accordingly, Warren/Sherer submits TDK could have reasonably anticipated its drive circuit would find its way into a larger product in the United States and then into Louisiana. TDK's actions clearly satisfy the minimum contacts test.

LOUISIANA'S EXERCISE OF JURISDICTION OVER TDK EASILY COMPORTS WITH CONSTITUTIONAL REQUIREMENTS OF FAIR-PLAY AND SUBSTANTIAL JUSTICE

Once sufficient minimum contacts are found to support Louisiana's exercise of personal jurisdiction, TDK can only escape jurisdiction by establishing the assertion of jurisdiction does not comport with the concept of fair

play and substantial justice. *International Shoe, supra.* Warren/Sherer respectfully submits TDK has failed to show Louisiana's exercise of jurisdiction is unfair. Specifically, the following factors must be examined: (1) the burden on the defendant to defend the suit in the forum state; (2) the forum state's interest in the dispute; (3) the plaintiff's interest in obtaining convenient and effective relief; (4) the judicial system's interest in obtaining an efficient resolution of the controversies; and (5) the state's shared interest in fostering fundamental substantive social policies. *See, World-Wide Volkswagen,* 444 U.S. at 292, 100 S. Ct. at 564; *Viam Corporation v. Iowa Export-Import Trading Company,* 84 F.3d 424, 429 (Fed.Cir. 1996); *Agramonte Gadea v. Citibank N.A.,* 964 F.Supp. 590, 595 (D.Puerto Rico 1997).

In this case, each of these five factors weighs strongly in favor of asserting personal jurisdiction over TDK. While it would be somewhat of a burden on TDK to defend the suit here in Louisiana, that burden is significantly less for a large international corporation like TDK, with a substantial presence in a number of states within the U.S., than it would be for average private citizens like the dozens of plaintiffs in this case. According to *Mohajer v. Monique Fashions,* 945 F.Supp. 23 (D.Puerto Rico 1996):

> It will almost always be burdensome for a defendant to defend itself in a foreign jurisdiction. In order for this factor to weigh against the court jurisdiction, therefore, it must be shown that the exercise of jurisdiction is onerous in a special, unusual, or other constitutionally significant way.

Id., at 28.[1] TDK certainly has not met that burden in this case.

The issue of judicial efficiency clearly cuts in favor of jurisdiction. Permitting the suit to continue in Louisiana, where a great deal of pleading and discovery has already taken place and where virtually all the relevant evidence is located, would definitely be more efficient than requiring the filing of what would be in essence an entirely new suit against TDK in Japan. While TDK cites *Asahi Metal Industrial Company v. Superior Court*, 480 U.S. 102, 105 S. Ct. 1026 (1987), as support for its attempts to dodge responsibility, one of the factors in *Asahi Metal* against a finding of jurisdiction was surely that those parties had alternative forums for their dispute that were more convenient to both of the parties. The only alternative in the instant matter is for all of the other parties to "pull up stakes" and move an ongoing judicial process to Japan.

But, undoubtedly the strongest of these "fair play" factors in favor of asserting jurisdiction against TDK is Louisiana's interests in the dispute. The lives of literally

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[1] See also *Cody v. Ward*, 954 F.Supp. 43, 47 n. 9 (D.Conn. 1997) ("The widespread use of facsimile equipment and overnight mail and the courts' increasing use of telephone conferences in lieu of live conferences reduces the burden on non-residents of litigating in a distant state. Even depositions can be done by telephone. . . . That leaves the burdens associated with the trial itself. But relatively few cases actually go to trial. Most are resolved before then. If a plaintiff's case has sufficient merit to survive a motion for summary judgment, requiring the defendant to bear the burden of traveling to the plaintiff's state for trial makes at least as much sense as requiring the plaintiff to do the traveling.").

scores of Louisiana citizens were adversely affected by the outbreak of Legionnaires' Disease at issue in this case. Without question, Louisiana has a paramount interest in protecting its citizens from defective products, especially those which cause harm on the scale present in this case.

"It is generally recognized that a forum state has a demonstrable interest in obtaining jurisdiction over a defendant who has caused a tortious injury within its borders." *Branch Metal Processing, Inc. v. Boston Edison Company*, 952 F.Supp. 893, 911 (D.R.I. 1996). In addition, it should be clear that promotion and encouragement of safe products, as well as holding those who sell defective products responsible for their actions, are certainly powerful "fundamental substantive social policies" in which Louisiana has a powerful and overriding interest.

Before concluding this argument, Warren/Sherer emphasizes the inappropriateness of re-examining Justice O'Connor's plurality in *Asahi Metal* in the context of the present facts.[2] The facts of *Asahi Metal* were significantly different in that it involved nothing more than an indemnity claim between a Taiwanese company and a Japanese company in a California court. While TDK attempts to characterize the instant matter as simply Warren/Sherer's

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[2] Likewise, an important distinction should be noted between the circumstances herein and some of the cases cited by TDK as instances where courts applied a minimum contacts "plus" test for personal jurisdiction. Several of the cases involve property damage where the courts have been reluctant to assert jurisdiction over a non-resident manufacturer. However, in situations of personal injury damage, like that suffered by the original plaintiffs herein, courts are more observant of the plaintiffs' limited options in seeking restitution elsewhere.

indemnification/contribution claim, it is primarily about who will bear ultimate responsibility to the injured citizens of Louisiana's Washington Parish for the outbreak of Legionnaires' Disease in Bogalusa. Despite TDK's repeated efforts to ignore plaintiffs and to misrepresent the nature of this case, the injured plaintiffs are still very much involved in this litigation and must not be forgotten.

Warren/Sherer acknowledges that this case might mandate a different outcome if the drive circuit at issue had arrived in Louisiana as a result of an unintended or unexpected use. However, to the contrary, the circuit was being used as an essential component part in an ultrasonic humidifier, the very use for which TDK designed it, intended it and marketed it. This case might also be different if the particular stream of commerce followed by the drive circuit had been in some way unusual or out of the ordinary. But, once again, the circuit found its way into Louisiana by a very normal and expected path of distribution.

On the basis of this factual context, Warren/Sherer submits that maintenance of personal jurisdiction against TDK in this matter would be in clear conformity with the due process analysis set down in *International Shoe*, and *World-Wide Volkswagen*. The presence in Louisiana of an allegedly defective TDK product through a stream of commerce which TDK knew was taking as much as 50% of its product to the Americas, and the harm that product is claimed to have caused, are sufficient minimum contacts with Louisiana on the part of TDK. As this Court stated in *Burger King Corp. v. Rudzewicz*, 471 U.S. 462,

473-74, 105 S.Ct. 2174, 2183 (1985) (citations & quotations omitted),

> [W]here individuals purposefully derive benefit from their interstate activities, it may well be unfair to allow them to escape having to account in other States for consequences that arise proximately from such activities; the Due Process Clause may not readily be wielded as a territorial shield to avoid interstate obligations that have been voluntarily assumed. And because modern transportation and communication have made it much less burdensome for a party sued to defend himself in a State where he engages in economic activity, it usually will not be unfair to subject him to the burden of litigating in another forum for disputes relating to such activity.

In addition, TDK's amenability to personal jurisdiction is in line with a balanced view of fair play and justice. Accordingly, TDK's declinatory exceptions of lack of personal jurisdiction to the third-party demand made against it by Warren/Sherer and to the supplemental and amending demand made against it by the plaintiffs were rightly overruled by Judge Hedges and her decision was correctly affirmed by the First Circuit.

CONCLUSION

As the Louisiana Supreme Court did, this Honorable Court should deny TDK's Application for Writ of Certiorari.

Respectfully submitted,

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